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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 124 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

OFISADE PVT LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 124 of 1991

MR RK PATEL for Petitioner No. 1

MR MIHIR JOSHI with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr Mihir Joshi learned counsel for the revenue makes a specific request that since this reference is pending for the last about 10 years and more particularly, since the controversy raised in this reference is concluded by a direct decision of this Court, this Bench may take up this reference for final disposal, notwithstanding the fact that one of us (Mr. D.A. Mehta,J) had appeared for the respondent-assessee at the hearing of the appeal before the Income Tax Appellate Tribunal.

In view of the above request, we take up this reference for final disposal.

2. In this reference at the instance of the assessee, the following question has been referred for our opinion in respect of assessment year 1978-79:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of CIT u/s.263 of the I.T. Act directing the ITO to withdraw the investment allowance even though the assessee company had transferred and assigned the whole undertaking and business as a going concern?"

3. We have heard Mr RK Patel learned counsel for the assessee and Mr Mihir Joshi learned counsel for the revenue.

4. Our attention is invited to the decision in Kalindi Investment P. Ltd vs. CIT, 213 ITR 207 which has also been followed by us today in Income Tax Reference No.58 of 1989. The said decisions pertain to the withdrawal of development rebate on account of assessee company having transferred and assigned the whole undertaking and business as a going concern. Since the same principles are applicable for investment allowance also, following the aforesaid decisions, we are of the view that the Tribunal was right in upholding the order of CIT u/s.263 of the Income Tax Act directing the I.T.O. to withdraw the investment allowance even though the assessee company had transferred and assigned the whole undertaking and business as a going concern.

5. Accordingly, our answer to the question is in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference accordingly stands disposed of with

no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-